

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the  
California Renewables Portfolio Standard  
Program.

Rulemaking 04-04-026  
(Filed April 22, 2004)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO  
ESTABLISHING SCHEDULE FOR PHASE TWO OF THE RENEWABLE  
PORTFOLIO STANDARD PROCEEDING**

This scoping memo sets forth the next steps to be taken in this proceeding in order to continue this Rulemaking's implementation of the Renewable Portfolio Standard (RPS) program. This Scoping Memo and Ruling follows two prehearing conferences (PHCs) held on May 5, 2004 and November 3, 2004, at which the parties discussed the schedule in this proceeding. Pursuant to Pub. Util. Code § 1701.1(b), this ruling further determines the issues to be considered in the proceeding as well as procedures and the timetable for their resolution, and addresses other procedural matters. Three major steps will occur in the immediate future: we require briefing on certain legal issues that require immediate attention, the utilities are directed to prepare and file RPS plans, and we ask for conceptual proposals to advance our progress in two important areas that need further development.

**Issues to be Briefed**

Several important issues require resolution of primarily legal (rather than factual) questions, or can be developed and addressed best through briefing. Those issues are: 1) participation of Electric Service Providers (ESPs) and

Community Choice Aggregators (CCAs) in the RPS program; 2) participation of small and multi-jurisdictional utilities in the RPS program; 3) treatment of Renewable Energy Credits (RECs) associated with generation from Qualifying Facilities (QFs) for which the contract does not expressly identify the RECs or their transfer of ownership from the QF to the IOU; and 4) refinement of reporting requirements, including issues relating to line loss.

Parties will be given the opportunity to submit opening and reply briefs on any or all of these issues. On the first two issues (re ESP/CCA/other utility participation in the RPS program), we are looking for comprehensive and detailed analyses of the legal foundation upon which the Commission can establish rules governing RPS participation for these entities. Actual implementation of their participation will occur in a second decision, but we intend to establish the fundamental basis for their participation from the briefs received. Any and all issues that need to be addressed and resolved for ESP/CCA and small and multi-jurisdictional utility participation in the RPS program should accordingly be raised in the briefs.

On the third issue - treatment of RECs associated with generation from QFs presently under contract with the Utilities – we wish to ensure that such RECs be counted towards California’s RPS and not be double counted for another purpose (*e.g.* the QF RECs should not be counted towards regulatory compliance in another region or to meet any other market claim). After many years of diligent effort to develop the renewable QF industry in California, this renewable generation should be counted towards meeting the state’s RPS goals. Accordingly, we intend to resolve this issue promptly. Parties should provide a description of how such RECs should be treated for purposes of the RPS program. In doing so, parties should provide an analytical framework and

foundation for their proposals, including reference to previous Commission and state of California actions. Comments that merely assert an ownership interest in particular RECs as an already-established fact are not helpful.

On the fourth issue – RPS compliance reporting requirements – we have received some suggestions for adding more specificity and greater uniformity to the reporting requirements. To facilitate the briefing of this issue, parties should use the Green Power Institute’s (Green Power) proposed changes to the RPS reporting requirements<sup>1</sup> (*see* Appendix A & B) as a starting point. Parties should also address (1) Pacific Gas and Electric Company’s (PG&E’s) request to change the RPS compliance reporting dates from Feb 1 - July 1 to March 1 - August 1;<sup>2</sup> (2) Green Power’s request that the utilities publicly disclose their annual procurement target (APT) baseline figures, down to the level of each plant and generation technology;<sup>3</sup> and (3) the legal and implementation issues associated with factoring line losses into the APT calculation.

Opening briefs on the four issues above are due on January 10, 2005, with reply briefs due on January 20, 2005. We anticipate having a draft decision on these issues placed on the Commission’s Agenda in April, 2005.

### **RPS Plan**

The utilities are directed to prepare and file an RPS plan that accomplishes three things: attainment of RPS goals for 2005 (in light of the still-pending 2004 RPS solicitations); a detailed plan for RPS procurement over the period 2005-2014, with an emphasis on achieving the 20% RPS goals in 2010 and

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<sup>1</sup> Green Power’s Petition to Modify Decision (D.) 03-06-071 August 12, 2004.

<sup>2</sup> PHC Statement on Phase 2 Issues of PG&E, p.5.

<sup>3</sup> Green Power’s Petition to Modify, *supra*,

including necessary transmission expansion; and a plan for attaining the optimum amount of generation from re-powered renewable facilities presently under contract to the utility. All three components of the plan should incorporate lessons learned during the 2004 RFP solicitations.

We note the direction in the Long-Term Procurement Planning proposed decision (mailed 11/16/04 in Rulemaking (R.) 04-04-003), ordering the utilities to file in this docket robust renewable procurement plans that will achieve the 2010 RPS goal. The Proposed Decision finds that the “renewable procurement sections in SCE’s and PG&E’s LTPPs (Long Term Procurement Plans) are inadequate and need revision.” (*Id.*, p.73.) The utilities should follow the guidance of the Proposed Decision, when it is finalized and approved by the Commission, regarding the contents of their 2010 plans. We need to begin this planning process now, and insufficient utility plans will not be accepted here.

In preparation for the 2005 RPS solicitation round, the utilities should also submit a draft 2005 plan that comports with the requirements of Pub. Util. Code § 399.14(a)(3), which include:

1. An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity;
2. Provisions for employing available compliance flexibility mechanisms established by the Commission; and
3. A bid solicitation setting forth the renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

We recognize that, with the 2004 RPS solicitations still pending, it will be difficult for the utilities to precisely identify their 2005 RPS needs in these plans. We emphasize that these are draft plans, which will be refreshed as the 2004

solicitations result in approved power purchase agreements, and utility needs change accordingly. The utilities are to make their best approximations of their annual procurement targets for 2005. Further changes to these 2005 plans may also be necessary following review of the results from 2004 by parties and the Commission. We anticipate that the 2005 RPS solicitations will take place in the fourth quarter of the year.

As a third and final element of these plans, the utilities should also address the treatment of potential repowering by facilities presently under contract. The utilities should identify their preferred policy approaches to this issue, including substantial arguments in support, and describe necessary Commission actions to effectuate these preferred policies.

These tripartite RPS plans – to achieve goals in 2005 and 2010, and to properly address re-powering opportunities – are to be filed by the utilities by February 17, 2005. Parties may file comments on, and/or counterproposals to, all issues under discussion in the plans on March 17, 2005. Reply comments are due on March 31, 2005.

### **Time-of-Delivery Market Price Referents and Tradable RECs**

There are other issues that also need further consideration, but that do not lend themselves to the briefing process. Two major ideas that we wish to explore further in a carefully considered manner are time-of-delivery-based market price referents (TOD MPR) and the possibility of allowing tradable RECs for RPS compliance. We want to utilize the significant experience and developed perspectives of the parties to inform our position on these issues, with an eye to possible implementation. In order to start this process, we are requesting that the parties provide conceptual proposals, outlining how a TOD MPR would be developed and utilized and describing their ideal REC trading system.

Regarding proposals for a TOD MPR, we note the findings in D.04-07-029 expressing the Commission's interest in understanding "how the TOD profile would be constructed, how public it would be, and whether separate TOD profiles for each utility would be appropriate. We will also want to consider the role of ELCC (Effective Load Carrying Capability) in constructing these TOD profiles, and the role of separate capacity payments, if any are appropriate, under the payment methods that will result." (*Id.*, p.25.) That decision also raised concerns regarding the interplay of TOD MPRs with the Energy Commission's administration of Supplemental Energy Payments, and expressed interest in developing a record to demonstrate that a TOD approach is consistent with the RPS statute. Parties submitting proposals for TOD MPRs should provide guidance on all of the issues identified above.

In setting forth REC trading proposals, parties should be guided by the concerns identified in D.03-06-071. As we stated in that decision:

While we will leave open the possibility that a REC trading system may be implemented in the future, we note that creation of such a system raises a number of significant issues that would need to be addressed. Before we consider adoption of a REC trading system, we will need a clear showing that a REC trading system would be consistent with the specific goals of SB 1078,<sup>4</sup> would not create or exacerbate environmental justice problems, and would not dilute the environmental benefits provided by renewable generation.

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<sup>4</sup> For example, if a utility were to meet its RPS requirements by purchasing RECs from generators located in other states, that would not appear to provide California with the economic development, job creation, environmental, and other benefits anticipated by the statute. Further, to the extent that the underlying power is not deliverable into California, public health and environmental benefits anticipated by the RPS statute may also not be realized. (*See*, § 399.11(a), (b) and (c).) (Footnote in original.)

Our recent experience in California with electricity markets has also sensitized us to issues of market manipulation, and we would want to be sure that a REC trading system could not be gamed to the detriment of the residents of California. (*Id.*, pp. 9-10.)

While we are interested in hearing parties' views of the ideal REC trading system that addresses the above concerns, given the numerous uncertainties regarding the development of a REC trading system, we would also be interested in parties' views about exploring initially limited applications of the concept, such as inter-utility trades.

The comments submitted on these topics should be considered the first word, rather than the last word. Parties will be given further opportunities to provide input to the Commission on both TOD MPR and REC trading. Opening comments are due on February 3, 2005 and reply comments are due on February 10, 2005. Energy Division, in coordination with the collaborative staff of the CEC, will schedule TOD workshops beginning the second week of February, 21 2005.

### **Process**

After the Commission has issued a decision on the first four issues set forth above, we will hold a further PHC in April to set a schedule for implementation of ESP/CCA and small and multi-jurisdictional utility participation in the RPS program. At the April PHC, we also anticipate scheduling a date for the filing of Advice Letters ("RFO-Trigger" Advice Letters) from the IOUs indicating whether or not they believe that a 2005 RPS solicitation is necessary based on the level of RPS procurement to date. Further steps regarding implementation of REC trading and TOD MPRs will also be scheduled as appropriate following receipt of party comments. Consideration of issues related to transmission policy and development, including issues raised by the

detailed transmission assessments the utilities will file as part of their RPS plans, will be coordinated with Investigation 00-11-001.

Concurrently, we expect to modify our implementation of the RPS program to reflect some of the early lessons learned from the first rounds of RPS solicitations, including refinements to the 2005 RPS procurement plans described above. The timetable for evaluating these lessons learned, and for refining the 2005 RPS plans, will be discussed at the April PHC and set forth in a subsequent ruling. To ensure that the RPS program is informed by experience, we direct the three major utilities to incorporate early lessons learned (Standard Contract Terms and Conditions, LCBF, and Renewable Transmission etc.); to the extent they are available, in their draft 2005 procurement plans. As already noted in the OIR, the Commission intends to resolve all matters in this proceeding within 18 months of the date of this scoping memo, consistent with Pub. Util. Code § 1701.5.

### **Procedural Schedule**

The procedural schedule in this proceeding at this time is as follows:

1	Opening Briefs on First Four Issues (ESP/CCA participation in the RPS program, etc.)	January 10, 2005
2	Concurrent Reply Briefs on First Four Issues	January 20, 2005
3	Comments on TOD MPR and REC Trading	February 3, 2005
4	Reply Comments on TOD MPR and REC Trading	February 10, 2005
5	IOUs file Draft 2005 RPS Procurement Plans (PPs)	February 17, 2005
6	Workshops on TOD MPR	Week of February 21, 2005
7	Comments on Draft 2005 RPS PPs	March 17, 2005
8	TOD MPR Workshop Report – developed by parties	March 21, 2005
9	Reply Comments on Draft 2005 RPS PPs	March 31, 2005
10	Decision on First Four Issues	April 2005
11	Second PHC – Schedule (1) ESP/CCA/SMU implementation, (2) TOU MPR implementation, and (3) 2004 RFO “Lessons Learned”	April 2005
12	IOUs File Advice Letters addressing the need for 2005 RPS solicitations	2 <sup>nd</sup> Quarter 2005
13	Commission Resolution Addressing “RFO-Trigger” Advice Letters	2 <sup>nd</sup> - 3 <sup>rd</sup> Quarter 2005
14	Briefing Schedule on 2005 RPS PPs and 2005 RPS Solicitation (Projected submission date at conclusion of Briefing Schedule)	3 <sup>rd</sup> Quarter 2005
15	Commission Decision(s) Approving 2005 RPS PPs and Directing 2005 RPS Solicitations	3 <sup>rd</sup> Quarter 2005
16	2005 RPS Solicitation	4 <sup>th</sup> Quarter 2005



### **Collaborative Process**

In the RPS phase of R.01-10-024 and throughout the course of this proceeding our Commission staff worked collaboratively with the staff of the California Energy Commission. This collaboration has proven to be both useful and productive and we intend to continue this process in this proceeding.

### **Category of Proceeding**

The Commission preliminarily determined that this is a ratesetting proceeding for which hearings may be required. This ruling confirms that the proceeding is ratesetting for which hearings may be conducted. This ruling on category may be appealed, as provided in Rule 6.4 of the Commission's Rules of Practice and Procedure (Rules).

### **Rules Governing *Ex Parte* Communications**

As discussed in the OIR, this is a ratesetting proceeding subject to Pub. Util. Code § 1701.3(c), which means that *ex parte* communications are prohibited unless certain statutory requirements are met. *See also*, Rule 7(c).

### **Principal Hearing Officer**

President Michael R. Peevey is the Assigned Commissioner in this proceeding. Administrative Law Judges (ALJs) Peter V. Allen and Julie M. Halligan are the assigned ALJs. Peter V. Allen is the principal hearing officer in this proceeding.

### **Final Oral Argument**

Pursuant to Pub. Util. Code § 1701.3(d) and Rule 8(d), any party requesting final oral argument before the Commission shall make such request by letter to the ALJs on the date to be set by the ALJ's and Assigned Commissioner.

### **Service List**

The current service list in this proceeding is posted on the Commission's website. Instead of replacing the existing service list in its entirety, based on the appearance forms filled out at the November 3, 2004, PHC, we have elected to add those new appearances to the existing service list. It is the responsibility of all parties to inform the Process Office of any changes to contact information, including electronic mail addresses. The Electronic Service Protocols attached to the April 22, 2004 OIR continue to apply to this proceeding.

### **IT IS RULED that:**

1. Parties may file and serve opening and reply briefs addressing the following issues (as described above): 1) participation of Electric Service Providers (ESPs) and Community Choice Aggregators in the Renewable Portfolio Standard (RPS) program; 2) participation of small and multi-jurisdictional utilities in the RPS program; 3) treatment of Renewable Energy Credits associated with generation from Qualifying Facilities; and 4) refinement of reporting requirements, including issues relating to line loss.
2. Opening Briefs are due on January 10, 2005, with Reply Briefs due on January 20, 2005.
3. The utilities shall submit RPS plans on February 17, 2005 that detail the attainment of RPS goals for 2005 (in light of the still-pending 2004 RPS solicitations); a detailed plan for achieving the RPS goals in 2010, including necessary transmission expansion; and a plan for attaining the optimum amount of generation from re-powered renewable facilities presently under contract to the utility, as described above. Plan development should be guided by the findings in the pending Long-Term Procurement Plan decision, particularly regarding transmission planning (*See Rulemaking 04-04-003*).

4. Consistent with the guidance provided above, parties are to file and serve comments that provide conceptual proposals for the development of time-of-delivery-based market price referents (TOD MPRS) and renewable energy credit trading (REC Trading) systems.

5. Comments on TOD MPRS and REC trading issues are to be filed and served on February 3, 2005, with reply comments filed and served on February 10, 2005.

6. Comments on the Draft 2005 RPS Procurement Plans are to be filed and served on March 17, 2005 with reply comments to be filed and served March 31, 2005.

7. This proceeding is categorized as ratesetting and evidentiary hearings may be necessary.

8. The timetable for this proceeding, including its projected submission date, is set forth in this ruling. As provided in the Order Instituting Rulemaking, the assigned Commissioner or Administrative Law Judges may make any revisions to this schedule or other rulings necessary for the fair and efficient management of the proceeding.

Dated December 16, 2004, at San Francisco, California.

/s/ Michael R. Peevey  
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Michael R. Peevey  
Assigned Commissioner

## **Appendix A**

Source: Green Power's Petition for Modification, dated August 12, 2004.

Each utility is required to make a filing on February 1 of the year following the applicable APT year outlining the results of achieving its APT. In addition, on July 1 (or the next business day thereafter) of each year, each utility should make a filing to the Commission outlining its progress toward achieving that year's APT, using a similar format to the February 1 filing. In the February 1 filing, each utility should clearly indicate its retail sales and APT for the relevant previous year, and its additional total renewable procurement that is eligible to meet this requirement, corrected for line losses, and sorted by at least the following renewable source types: (e.g., wind, solar, biomass, geothermal, etc.),

- Biogas (landfill gas, digester gas)
- Biomass
- Geothermal
- Hydro
- Solar
- Wind

The data can be further broken down into subcategories at the discretion of the utilities. However, at a minimum, the utilities must report their total RPS-qualifying procurement in the specified categories. In addition, utilities should provide an accounting of past, current and anticipated future deficits and carry forwards, and any additional information deemed necessary based on utility consultation with the Commission's Energy Division. The July 1 filing should contain the same information for the then current year, but with a clear delineation between actual and forecast quantities for the applicable year, and any relevant corrections to the previous year's procurement data that was provided in the February Compliance Report. The February 1 filing should also include a calculation of the current-year APT (previous year's APT plus IPT).

**(End of Appendix A)**

## Appendix B

Source: Green Power's Petition for Modification, dated August 12, 2004.

### Proposed Summary Table for February RPS Compliance Filings

Previous-Year APT _____ ( = adjusted baseline)	IPT _____	Current-Year APT _____		
	2003	2004	...	Previous-Year
	<u>KWh</u>	<u>KWh</u>		<u>KWh</u>
Utility Retail Sales				
Renewable Procurement (KWh) - corrected for losses				
Biomass				
Biogas				
Geothermal				
Small Hydro				
Solar				
Wind				
Total Renewables				
APT				
Carry Forward (put deficits in parentheses)				

### Proposed Summary Table for July RPS Compliance Filings

	Previous-Year to-date ( )	Current-Year proj. full year	
	<u>KWh</u>	<u>KWh</u>	<u>KWh</u>
Utility Retail Sales			
Renewable Procurement (KWh) - corrected for losses			
Biomass			
Biogas			
Geothermal			
Small Hydro			
Solar			
Wind			
Total Renewables			
APT			
(Deficit) or Surplus			

**(End of Appendix B)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling and Scoping Memo Establishing Schedule for Phase Two of the Renewable Portfolio Standard Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated December 16, 2004, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.